

LABOUR DEPARTMENT

The 31st May, 1984

No. 9/5/84-Lab/3572.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Super Auto (India) Pvt. Ltd., Plot No. 62, Sector 6, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 49/1982

between

SHRI RATI RAM, WORKMAN AND THE MANAGEMENT OF M/S SUPER AUTO
(INDIA) PVT. LTD., PLOT NO. 62, SECTOR 6, FARIDABAD

Present :

Shri S. S. Gupta, representative for the workman.

Shri R. C. Sharma, representative for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, to this Tribunal, between Shri Rati Ram, workman and the management of M/s Super, Auto (India) Pvt. Ltd., Plot No. 62, Sector 6, Faridabad for determination :—

Whether the termination of services of Shri Rati Ram was justified and in order ? If not, to what relief is he entitled ?

Notices were issue to both the parties. The demand notice, dated 11th November, 1981 was treated as claim statement by the workman on 16th March, 1982 in which it was alleged that the workman was employed as sweeper for the last about 2 years and his work and conduct was satisfactory and he was drawing salary of Rs 180 per month. It was further alleged that in September, 1976, the workman was got arrested from the factory premises on the basis of alleged theft and was released on bail after about 4 days and when he reported for duty, the management told him that he would be taken on duty after the decision of the theft case. It was further alleged that the criminal trial ended on 30th September, 1981 when the Chief Judicial Magistrate acquitted him of the charge. It was further alleged that thereafter the workman repeatedly approached to the management to take him back on duty but to no effect. It was therefore, prayed that he be reinstated with full back wages.

3. The management in their written statement, dated 9th April, 1982 pleaded that Shri Rati Ram workman submitted his resignation on 29th September, 1978 and his services were terminated. It was further pleaded that the dispute had been raised individually by the workman and that section 2-A did not permit such a dispute regarding resignation and further that the dispute was time barred. It was further pleaded that the workman was prosecuted by the State for committing theft, but he tendered his resignation.

4. The workman in his rejoinder, dated 5th April, 1982 reiterated the plea taken in the claim petition. It was denied by him that he tendered his resignation.

5. On the pleadings of the parties, the following issues were framed on 7th June, 1982 :—

- (1) Whether the management terminated the services of the workman ? If so, whether termination is legal and proper ? (OPM)
- (2) Whether the applicant has resigned of his own ? (OPM)
- (3) Whether the dispute is bad under section 2-A in view of the resignation as alleged ? (OPM)
- (4) Whether the dispute is time barred ? (OPM)
- (5) Relief.

The management has examined MW-1 Shri D. C. Sharma, Works Manager and the document Ex. M-1 has been tendered into evidence. Shri Rati Ram has appeared as WW-1 and the documents Ex. W-1 to Ex. W-7 have been tendered into evidence. After going through the evidence, both oral and documentary, and hearing both the sides, my findings on the above issues are as under :—

Issue No. 1 to 3.

6. All these issues are interlinked and as such can be decided together conveniently MW-1 Shri D. C. Sharma, Works Manager of the management, stated that the present workman was employed in the factory as sweeper but he was arrested by the Police in a theft case. He further stated that the workman came to the factory 3/4 days thereafter and stated that account be settled because he was tendering resignation. He further stated that the resignation Ex. M-1 had been tendered by the workman and he affixed his signature thereon at point "A". He then stated that thereafter no interest was taken by the management in the theft case. Document Ex. M-1 is alleged letter of resignation, dated 29th September, 1978. Shri Rati Ram has appeared as WW-1 and stated that he was working in the factory for the last about 2 years before his services were terminated. He further stated that his relations were strained with the management due to which he was falsely involved in the theft case and was arrested by the Police and remained in Police custody for 3/4 days. He further stated that when he was released in that case, he came to the factory and was told by the management that he would be taken on duty after the criminal case was decided. He further stated that he was acquitted in the criminal case,—vide copy of the judgement Ex. W-1 and thereafter he filed the demand notice and that the conciliation report was Ex. W-2. Ex. W-3 to W-7 are the photostat copies of the wage slips. He then stated that he did not tender resignation of his own free will and that the writing in the document Ex. M-2 was not in his hand. He further stated that Ex. M-1 bore his signature but he did not sign on any letter of registration. He further stated that when he was in police custody, his signatures were obtained on blank papers and that the proprietor of the management was also present at that time. He further stated that he was unemployed.

7. The case of the management put-forwarded through MW-1 Shri D. C. Sharma, Works Manager is that Workman was arrested by the police in a theft case and when he was released on bail he came to the factory and tendered resignation Ex-M-1. In cross examination, this witness stated that he did not know the name of parties on this document. A perusal of the document Ex. M-1 would show that the same has been written by some person who has not very little knowledge of Hindi Language. The workman/WW-1 clearly stated that this document was not written by him. The name of the writer has not been disclosed by the Management. MW-1 Shri D. C. Sharma does not know the name of the person who wrote this document. Moreover the workman had already been arrested by the police in a theft case prior to the writing of the document Ex. M-1 dated 20th September, 1978. The criminal case had already been registered against him. During the pendency of the criminal proceeding, it cannot be believed that the workman would tender his resignation. Further relation between the workman and the management were already be strained because the workman had already been got arrested in a criminal case. No independent witness has come forward to corroborate the version of MW-1 Shri D. C. Sharma. Besides the workman took the plea that he was in services for the last about 2 years prior to his arrest. MW-1 Shri D. C. Sharma, Works Manager stated that he could not tell the date for what the workman was in service. Copy of he appointment latter has not been produced by the management. The recitals made in the document Ex. M-1 are to the effect that the case of the workman in his demand notice was that he was in service of the management for the last about 2 years prior to the incident. No documentary evidence has been led by the management to rebut the testimony of the workman. If the workman had tendered his resignation, then the amount due to him must have been paid. MW-1 Sharma stated that the management did not prepare any account of the workman after the alleged resignation. Under these circumstance, the evidence led by the management does not go to prove that the workman voluntarily tendered his resignation on 29th September, 1978. On other hand, the workman clearly stated, while appearing as WW-1, that the signatures were obtained on blank paper, in the presence of the management, when he was in police custody and that he never affixed his signature on any letter of resignation. When the criminal proceedings were pending against the workman the question of tendering resignation by him does not arise because he would await the verdict of the court in those proceedings. The workman was acquitted by the learned Chief Judicial Magistrate, Faridabad on 30th September, 1981 in the theft case,—vide judgement, copy Ex. W-1. Consequently, the alleged letter of resignation Ex. M-1 does not appear to be agenuine document and it cannot be held that the workman, in-fact, tendered his resignation on 29th September, 1978. In the present case, no chargesheet was served on the workman nor any enquiry was held by management. The plea of the management about tendering of resignation by the workman has not been accepted. In the ruling reported as Cammon India Limited V. Jiranjan Dass, 1983-1ab-I. C. page 1865, it is held that termination of service on account of recssion and reduction in volume of work of company amounts to retrenchment and where pre-requisites for valid retrenchment were not complied with, retrenchment bringing about termination of office would be abinitio void. In the ruling report as Nirvair Singh V. The Punjab State Electricity Board, AIR 1973 Punjab & Haryana page 322, it

is laid down that resignation became effective from the very day, it was tendered. This ruling is distinguishable on facts because the management has failed to prove that the workman tendered his resignation. The ruling reported as *Khardha & Company Ltd. and its workmen, 1963-I-LLJ* page 452, deals with the dismissal of a workman after holding of domestic enquiry. This ruling is obviously different. In the present case, no such enquiry was held and the plea of resignation taken by the management has failed. In the ruling reported as *Lachman Dass and other V. M/s India Express Newspapers, Bombay, 1977 Lab. I. C. page 823*, it is laid down that the termination by way of disciplinary action as a punishment is directly in conflict with termination by way of retrenchment. This ruling is distinguishable of facts because in the present case, the services of the workman were not terminated as a punishment, but, on the basis of alleged resignation, which plea has not been found to be correct.

8. In view of the above discussion, it is held that the management did not terminate the services of the workman in a legal and proper manner because no charge was served on him nor any enquiry was held nor any amount due to the workman was paid to him, according to the rules. Issue No. 1 is decided accordingly against the management. It is further held that the petitioner did not tender his resignation and the alleged letter of resignation Ex. M-1 does not appear to be a genuine piece of document. Issue No. 2 is decided against the management. It is also held that the dispute is not bad under section 2 (A) of the Industrial Disputes Act, 1947, because the services of the workman have not been validly terminated by the management, which resulted in filing demand notice by the workman and the management has failed to prove the plea regarding tendering of resignation by the workman. Issue No. 3 is decided accordingly against the management.

Issue No. 4.

9. It was argued on behalf of the management that the reference was time barred. In the ruling reported as *Town Municipal Council, Athani V. Presiding Officer, Labour Court, Hubli and others, AIR-1969-Supreme Court, page 1335*, it is laid down that Article 137 of the Schedule to the Limitation Act, 1963 does not apply to the applications under section 33-C(2) of the Industrial Disputes Act, 1947. In the ruling reported as *The Kerala State Electricity Board V. P. Kunhalumma, AIR-1977 Supreme Court, page 282*, it is laid down that Article 137 of the Limitation Act, 1963, will apply to the petitions of applications filed under the Acts in a civil court. This ruling does not help the management because the Industrial Tribunal is not a civil court. On the other hand, in the ruling reported as *Nityanand M. Joshi & another V. The Life Insurance Corporation of India & Other, AIR-1970 Supreme Court, page 209*, it is laid down that Article 137 of the constitution does not apply to an application under section 33 c (2) of the Industrial Disputes Act, 1947. Consequently, the present reference is not time-barred because the period of limitation as prescribed under the Limitation Act does not apply to the present proceedings. It may be mentioned that the Management placed reliance on the ruling reported as *Bombay Steel Rolling Mills Ltd., and others V. Khem.Chand Raj Kumar Steel Mills and Paborpur Yards Labour Union, 1964-II-LLJ, page 120*, in which it is laid down that where the workmen were acquitted, but they did not report to the management within reasonable time of their acquittal, but offered for work after considerable delay, the employer cannot be asked to reinstate such workman. In that case, the workman was acquitted in July, 1959 and he wrote a letter to the Company asking reinstatement on 21st April, 1960. In that case there was delay of 9 months. This ruling is distinguishable on facts because in the present case, the workman was acquitted on 30th September, 1981 and he raised his demand notice on 11th November, 1981. He clearly stated that he had repeatedly approached to the Management to take him back on duty, but to no effect. Consequently, the workman was requesting the management immediately after his acquittal, but his efforts did not bear any fruit and he made the demand notice dated 11th November, 1981 i.e., after one month and 11 days of his acquittal, during which period he approached the management, but in vain. Consequently, the dispute is not timebarred. The issue is decided accordingly against the management.

Issue No. 5.

10. In view of the foregoing discussion, it is held that the termination of services of Shri Rati Ram, workman, was not justified and in order. Consequently, he is entitled to reinstatement with full back wages with effect from the date of the demand notice dated 11th November, 1981. The award is passed accordingly.

Dated, the 15th May, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 342, dated the 17th May, 1984.

Forwarded (Four Copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.